

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Consumers' Action Network,

Complainant,

vs.

Pacific Bell Telephone Company and AOL-Time
Warner, Inc.

Defendants.

Case 02-07-044
(Filed July 24, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING
AND DENYING IN PART MOTION TO COMPEL DISCOVERY**

1. Summary

The Utility Consumers' Action Network (UCAN) moves to compel responses by AOL-Time Warner, Inc. (AOL) to three data request questions. AOL objects to the questions as overbroad and irrelevant. The motion to compel is granted in part and denied in part.

2. Background

UCAN's motion addresses 3 of 19 questions propounded to AOL in a data request on October 17, 2003. The disputed questions are:

6. Please produce any communication between AOL and any telecommunications company operating in California relating to charges on AOL customer's phone bills related to dialing to access AOL service.

7. Please produce all documents which refer or relate to any investigation conducted into AOL customers experiencing charges on the customer's phone bill for dialing to access AOL service.

8. Please produce all documents which refer or relate to any investigation conducted into the billing or routing of phone calls placed by AOL customers attempting to access AOL service.

AOL objects to the three questions on grounds that (1) the questions are overbroad in that they set no time limit on the requested information; (2) the questions are overbroad in that they seek information about telephone calls and bills of carriers other than Pacific Bell (now SBC California, or SBC), and (3) the questions are irrelevant in that they seek information about issues other than the issue of alleged "rerouting" of AOL customer calls.

UCAN argues that the Commission has broadly construed requested discovery of information that either is admissible or appears reasonably calculated to lead to the discovery of admissible evidence. (*See, e.g., Re Pacific Enterprises* (1998) 79 CPUC2d 417.) UCAN also contends that the scope of this complaint case goes beyond the single issue of alleged rerouting of AOL customer calls.

3. Discussion

As noted in the Scoping Memo of August 26, 2003, this case considers not only the issue of whether defendants have systematically rerouted telephone calls from toll-free numbers to toll numbers, but also whether defendants have violated Pub. Util. Code §§ 2889.9 or 2890 and whether defendants have misled subscribers who attempt to dial an Internet Service Provider (ISP) without a toll charge. Answers to the UCAN questions at issue here are either relevant or may lead to relevant evidence as to one or more of these issues.

The questions are overbroad, however, in that they fail to limit the time period for the data requested and they appear to seek information on an

industry-wide basis rather than information related to toll charges for calls to AOL that appear on subscribers' SBC telephone bills. UCAN had the opportunity to seek a broader investigation of telephone companies and ISPs under Pub. Util. Code § 1708.5, but it elected to limit its complaint to allegedly unauthorized charges for calls to AOL that appear on telephone bills of SBC subscribers.

This ruling limits the time for the requested information to the period since June 1, 2001, as suggested without objection by AOL. This ruling limits the information sought in questions 6, 7 and 8 in the following manner:

In question 6, insert the word "SBC" between the words "customer's" and "phone."

In question 7, insert the words "in California" between the words "customers" and "experiencing," and insert the word "SBC" between the words "customer's" and "phone."

In question 8, add the words "in California through their SBC service" after the words "to access AOL service."

This ruling instructs AOL to respond to questions 6, 7 and 8 as to communications between AOL and any telecommunications company, including contract telecom providers like UUNET and Qwest, so long as the communications relate in any way to SBC subscribers and their attempts to connect toll free to AOL. It is noted that UCAN has executed a confidentiality agreement with AOL to safeguard the information that UCAN obtains.

IT IS RULED that The Utility Consumer Action Network's, motion to compel discovery responses from AOL-Time Warner, Inc. (AOL) is granted in part and denied in part as set forth more fully in this ruling, and AOL is directed to respond promptly to the revised questions pursuant to this ruling.

Dated December 8, 2003, at San Francisco, California.

/s/ Glen Walker

Glen Walker
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting and Denying in Part Motion to Compel Discovery on all parties of record in this proceeding or their attorneys of record.

Dated December 8, 2003, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

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